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6 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**  
7 **OF THE STATE OF CALIFORNIA**  
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9 In the Matter of the Application of:

10 **A. A., applicant on behalf of**

11 **A. A. (minor)**

**Precedent Decision No. 01 - 01**

12 A hearing on this application filed with the Victims of Crime Program (Program) was held on  
13 May 2, 2001, in Santa Rosa, California; by Christina M. Aceituno, Hearing Officer, who was assigned  
14 to hear this matter by the Executive Officer of the Victim Compensation and Government Claims  
15 Board (Board).

16 The applicant, A. A., attended the hearing.

17 The hearing was closed to the public under Government Code section 13963.1.

18 **Claim History**

19 The application filed on behalf of A. A. was received on May 19, 2000; was recommended for  
20 denial on the October 31, 2000, consent calendar; and was appealed. The hearing was continued from  
21 the February 27, 2001, Board meeting at the applicant's request. This matter was assigned to a hearing  
22 officer when the Board was unable to hear it on May 8, 2001.

23 **Summary of Issues**

24 Staff recommended the denial of the application because staff determined that there was  
25 insufficient evidence that A. A. was the victim of a qualifying crime.

26 **Findings of Fact**

27 Ms. A. contacted Child Protective Services (CPS) to report that her daughter, A. A. (Date of  
28 Birth, January 26, 1993), was fondled by her seven-year-old half brother, M. B., on April 21, 2000.  
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1 This is one of a series of incidents of physical abuse and child molest occurring over several years that  
2 were reported to CPS.

3 A. A.'s counselor, T. B., reported that Ms. A. stated that on April 25, 1995, A. A. used her  
4 Raggedy Ann doll to imitate "making out" and laying on top of the doll imitating sexual intercourse.

5 T. B. reported that Ms. A. stated that on September 2, 1995, A. A. held an empty balloon to her  
6 mouth and said, "this is Daddy's pee-pee." Later she told her mother that she had seen her stepmother  
7 "drinking Daddy's pee-pee."

8 T. B. reported that Ms. A. stated that on September 17, 1995, A. A. attempted to give her mother  
9 an open-mouth kiss, sticking her tongue out a little bit stating "Daddy taught me." She also reported  
10 when she told A. A. that she would be seeing "Barrie" in a couple of days, A. A. responded, "I can  
11 talk to her about licking Daddy's pee-pee."

12 Ms. A. reported that on January 22, 1996, A. A. acted in a sexualized manner after returning  
13 from a visit with her father. A. A. tried to put her mother's hand on A. A.'s pubic area. She reported  
14 to her mother "Daddy and Becka do it."

15 T. B. reported that on March 26, 1996; April 14, 1996; and September 20, 1996; A. A. disclosed  
16 that her Daddy touched her "pee-pee".

17 T. B. reported on September 29, 1996, that A. A. disclosed to her mother that she touched  
18 someone's "pee-pee." She did not say whose "pee-pee" she touched.

19 According to medical documentation from Queen of the Valley Hospital, on February 18, 1997,  
20 A. A. was treated for bruises and contusions that her father said occurred when she fell from a roof  
21 while visiting her father. The treating physician's note states that the injuries are inconsistent with a  
22 fall from a roof.

23 On December 13, 1998, A. A. returned from visitation with her father with a black eye. Her  
24 father explained that this injury occurred when she fell off a motorcycle.

25 On December 20, 1998, A. A. returned from visitation with her father with an injury to her  
26 forehead and to her mouth resulting in extraction of her front teeth. Her father explained that this  
27 injury occurred when she was "roughhousing" with her brother.

1 On February 2, 1999, A. A. returned from visitation with her father with an abrasion to her  
2 genitalia as a result of playing with feminine hygiene products with her brother.

3 JoAnne Hall, MFT, who is currently treating A.A., concluded that the visitation with A. A.'s  
4 father is not a safe and secure situation for A. A. Rebecca Feiner, LCSW with Napa County CPS, in a  
5 letter dated January 12, 2001, also expressed concerns about A. A.'s father's failure to provide  
6 adequate supervision to the children in his home. Ms. Feiner concluded that visitation should occur in  
7 Napa County thus "alleviating the minor's anxiety regarding visits in her father's home."

### 8 **Determination of Issues**

9 An application shall be granted if a preponderance of the evidence shows that as a direct result of  
10 a crime, the victim or derivative victim incurred an injury resulting in a pecuniary loss. (Gov. Code,  
11 § 13964(a).) The applicant has the burden of proving all issues necessary to establish eligibility,  
12 including the elements of the qualifying crime. (Cal. Code Regs., tit. 2, sections 647.32, 653.4.)<sup>1</sup>

13 It is a violation of Penal Code section 273a(b) to willfully cause or permit any child to suffer, or  
14 inflict unjustifiable physical pain or mental suffering, or having the care or custody of any child,  
15 willfully cause or permit the person or health of that child to be injured, or willfully causes or permit  
16 that child to be placed in a situation where his or her person or health is endangered.

17 It is a violation of Penal Code section 288(a) to willfully and lewdly commit any lewd or  
18 lascivious act upon the body of a child under age 14 with the intent of arousing, appealing to, or  
19 gratifying the lust, passions or sexual desires of the perpetrator. A victim of specifically enumerated  
20 crimes, including Penal Code section 288 [Lewd or Lascivious Acts with Children] who sustained  
21 emotional injury is presumed to have sustained physical injury. (Gov. Code, § 13960(b)(1).)

22 Several factors must be considered evidence of a child physical or sexual abuse qualifying crime,  
23 including: medical or physical evidence consistent with sexual or physical abuse; a report from law  
24 enforcement or a child protective services agency concluding that sexual or physical abuse occurred; a  
25 credible witness corroborated sexual abuse; and criminal charges of sexual or physical abuse are filed.  
26 (Reg. § 654.2(a).) There is insufficient evidence that any of these factors are present.

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29 <sup>1</sup> All regulation citations are to California Code of Regulations, Title 2.

1 Several factors may be considered evidence of child sexual or physical abuse, including: a mental  
2 health evaluation concluding that sexual or physical abuse occurred; the child victim's statement to law  
3 enforcement or a child protective services agency; and evidence of behavior consistent to sexual or  
4 physical abuse. (Reg. § 654.2(b).) There is sufficient evidence that A. A. made statements to her  
5 therapist and her mother that her father engaged in lewd and lascivious acts.

6 There is insufficient evidence that the incident that was the basis of this application (the fondling  
7 of A. A. by her seven-year-old half brother) is a qualifying crime. There is insufficient evidence that  
8 the seven-year-old half brother had the criminal intent necessary for a violation of Penal Code section  
9 288. (Pen. Code, § 26.) However, A. A. may be eligible for the program if she is determined to be the  
10 victim of a qualifying crime, even if it is not the crime for which the application was submitted.

11 Although any of the incidents taken alone may not provide sufficient evidence of a qualifying  
12 crime, upon considering the weight of all of the evidence and the testimony of Ms. A., there is  
13 sufficient evidence that A. A. was the victim of one or more violations of Penal Code section 288  
14 [Lewd and Lascivious Acts with Children].

15 Although any of the incidents taken alone may not provide sufficient evidence of a qualifying  
16 crime, upon considering the weight of all of the evidence and the testimony of Ms. A., there is  
17 sufficient evidence that A. A. was physically injured as a result of one or more violations of Penal  
18 Code section 273a(b) [child endangerment].

19 A crime shall mean one act or series of related acts arising from the same course of conduct with  
20 the same perpetrator or perpetrators against a victim. (Gov. Code § 13960(c).) A series of crimes  
21 committed against the same victim by a perpetrator over a period of time with a continuity of purpose  
22 constitutes one crime for program eligibility. (Reg. § 653.3(b)(3).) Upon considering the weight of  
23 the totality of the evidence, there is sufficient evidence that A. A. was the victim of a qualifying crime.

24 This application shall be allowed and all verified, eligible pecuniary losses should be  
25 reimbursed.  
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1 Date: July 13, 2001

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10 **A. A., applicant on behalf of A. A. (minor)**

**Precedent Decision No. 01 – 01**

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12 On July 13, 2001, the Victim Compensation and Government Claims Board modified its  
13 Decision in the above-referenced matter and adopted the attached Decision as a Precedent Decision.  
14 The Decision became effective on July 13, 2001.

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16 Date: July 24, 2001

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18 CATHERINE CLOSE  
19 Chief Counsel  
20 Victim Compensation and Government  
21 Claims Board  
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